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In This Issue

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The President's Page

By AUGUSTUS F. MACK, JR.
President, Los Angeles Bar Association

Mr. Stanley L. Johnson

Assistant Executive Secretary to the Los Angeles Bar Association, who will become Executive Secretary on September 1st, 1957.

Last Fall this column carried word concerning the retirement of J. Louis Elkins as Executive Secretary of the Los Angeles Bar Association effective September 1, 1957. "Lou" will have completed 30 years of wholehearted devoted and completely competent service to the Association. While we would like to have him continue with us longer, his wish to retire is, of course, paramount and properly recognized.

After months of searching and interviewing by a special committee for the purpose, I am happy to announce Louis Elkins' successor. He is Stanley L. Johnson. I take this means of introducing him to you and he will be seen in action soon. You will like him and like his style.

Stanley L. Johnson is thirty-four years of age, is married, and lives in Los Angeles. He is a graduate of the University of Southern California, AB 1949, went on in graduate work at the same University and received the Degree of M.S., 1951. He studied further

for his Ph.D. in Education and is a candidate presently for such Degree.

Mr. Johnson leaves his post as Director, Civic Center Division, School of Public Administration, University of Southern California, to come with us. He has been employed by appropriate resolution of the Board of Trustees as Assistant Executive Secretary of the Association commencing April 15, 1957, half time, and on May 15, 1957, full time. In this way he will have the benefit of some four months close association with Louis Elkins and the work of the Association before taking over as Executive Secretary upon Lou's retirement.

We wish Stanley L. Johnson all success in his new task. The shoes are hard to fill, but we hold every confidence he will do a capital job.

Issue Editor—Richard E. Tuttle

Can Government & Justice Survive the H-Bomb?

(The problems of civil defense against nuclear bombing have been widely discussed for some years, and are being continuously examined by governmental agencies created for this purpose. A related matter, which concerns attorneys more directly than any other group, has not, it appears, received the attention that it merits. Because these problems are the responsibility of the Bar, the following Preliminary Report of the Special Committee on Legal Problems in Disaster is presented in full.)

I. Introduction. This special committee of the Los Angeles Bar Association was appointed in October pursuant to a request made by Hon. Vernon Kilpatrick, Chairman of the Assembly Subcommittee on the Impact of Enemy Attack on Constitutional Government. The task given the Los Angeles Bar Association special committee was to study legal problems that may arise in time of disaster with particular reference to the impact of enemy attack on constitutional government so as to provide, in advance, appropriate legislation to eliminate distress and confusion and to assure the continuation of the administration of justice through the disaster period. The special committee was given only six weeks to study and report. With such a short time all that the committee can do is to investigate the problems that might arise.

Current civil defense estimates are that in the initial enemy attack, 70% of the bombs would be delivered on target and that there would be sufficient bombs to hit all critical target areas. Charles Fairman, "Government Under Law in Time of Crisis," page 88. Our retaliatory attacks would destroy the enemy's attacking ability, but it is assumed that he might be able to mount some repeated attacks for secondary target areas. Victory in such a war might well go to the society that could hold together in face of such catastrophies. David F. Cavers "Legal Planning Against the Risk of Atomic War," 55 Col. L.R. 136.

Los Angeles is important. The assessed valuation of Los Angeles County for 1953-54 was greater than the assessed valuation of 39 states—only 9 states (including California) exceeded it in assessed valuation. As of January 1, 1955, with 5,186,000 inhabitants, only 8 states (including California) exceeded it in population. Los Angeles City in 1955 was exceeded in population by only 27 states and in assessed valuation by only 21 states. (In judging these fig-

ures keep in mind that Los Angeles County assessments are conservative—estimated at 35% of actual value.)

Los Angeles is busy. The Los Angeles Metropolitan Area (Los Angeles and Orange Counties) in 1954 was in third place nationally in value added by manufacture, only New York and Chicago exceeding it. In June 1956 the Los Angeles Metropolitan Area had 704,000 workers in manufacturing and in July 1956 a total number of 2,367,000 persons gainfully employed. In 1954 the number of industrial establishments was 14,492, second only to New York. In 1954 Los Angeles County agricultural production was fourth nationally with products valued over $170,000,000. The Los Angeles fishery has the greatest dollar volume in the United States. In 1954 the Los Angeles Metropolitan Area had thirteen industries with a dollar volume of over $100,000,000 each and eight over $200,000,000 each. These figures do not include movies which employ about 34,000. Los Angeles is the number 1 county in the nation in retail store sales (passing Cook County, Illinois, in 1954).

It is probable, then, that the Los Angeles area would be hit. Since it is so spread out, it might be hit repeatedly. If the whole State of California were destroyed or uninhabitable the problems presented to the special committee might become moot. Such total destruction, however, is not contemplated. For the purposes of this report it is assumed that the results of the atomic attacks would be far more serious than the earthquakes, fires and floods experienced by the State because the nerve centers would be destroyed or injured. Large parts of California, however, would be relatively undamaged.

II. STUDY IMPORTANT. In the face of a hard first hit plus possible repeated attacks could the Los Angeles area maintain social cohesion? Probably injured would be fleeing the hard hit areas and secondary target areas would be evacuating. Some of the problems caused by such a situation will be mentioned later, but it is unlikely that present legal machinery is adequate.

Some think "when the 'real thing' comes the Army will have to 'take over' "—that a "dictator . . . backed by martial law, would be the only solution . . ." Charles Fairman "Government Under Law in Time of Crisis" supra, pages 108 and 110. But the Army feels that "they have got enough to do as it is . . ." and ". . . do not like to take on these responsibilities . . ." but "They cannot escape being forced to act. . . . The failure of . . . the people to understand

the danger . . . is incomprehensible . . ." Charles Fairman, supra, page 111.

This special committee submits that a study of disaster legal problems is important. Present legal machinery should be studied to determine if it is adequate for such disasters and if it is, to show how it would work. If it is not (and the committee believes that such is the case) study should be made of improvements to do the job.

This special committee does not believe that lawyers will long tolerate martial law. See Fessenden, "Martial Law and the State of Seige," 30 Cal. L.R. 634; Anthony Garner, "Martial Law in Hawaii," 30 Cal. L.R. 371 and 600; "Martial Law, Military Courts and the Writ of Habeas Corpus in Hawaii," 31 Cal. L.R. 477; Walter Armstrong, "Martial Law in Hawaii," 29 A.B.A.J. 698. But there might be no choice.

Advance planning to insure the continuation of civil control would help in preventing martial law or in getting it withdrawn if it were imposed. Homer Crotty, "Administration of Justice and the H Bomb," 37 A.B.A.J. 893. It would be a contribution to our citizens worthy of our profession.

III. CATEGORIES OF PROBLEMS. Problems facing persons studying disaster problems can for convenience be grouped under the following headings:

A. Law and Order.
B. Preservation of Records.
C. Emergency Rules of Law.

They will be discussed under those headings.

IV. LAW AND ORDER. Law and order problems seem to resolve themselves into the prompt reestablishment of state and local government. This mainly involves the replacement of personnel. Such problems present two questions:

(1) Are present provisions adequate, and if not what changes are necessary?

(2) Will changes proposed insure that the personnel is qualified?

A. *Reestablishing State Government.* Reestablishing our state government after an atomic attack raises basic questions of California Constitutional Law. For example Article IV, §8 provides:

"A majority of each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and may compel the attendance of absent members in

such manner, and under such penalties, as each house may provide."

and Article IV, §12 provides:

"When vacancies occur in either house, the Governor, or the person exercising the functions of the Governor, shall issue writs of election to fill such vacancies."

Suppose the attack, hitting California urban areas but leaving the rest of the state largely undamaged, killed or seriously injured more than a majority of one house or both houses. Would the state government be paralyzed until an election? (Note, it would not be a simple matter to hold an election under such circumstances.)

Suppose further, that all of the officers listed in Article V, §16 as successors to the Governor were killed. This section provides that:

"In any case in which a vacancy shall occur in the Office of Governor, and provision is not made in this Constitution for filling such vacancy, the senior deputy Secretary of State shall convene the Legislature by proclamation to meet within eight days after the occurrence of the vacancy in joint convention of both houses at an extraordinary session for the purpose of choosing a person to act as Governor until the office may be filled at the next general election appointed for election to the Office of Governor."

Assuming the senior deputy Secretary of State to be alive to convene the legislature, is it possible that the state government would be stranded because of lack of a quorum to choose a person to act as Governor?

In any emergency the presence of a legislature to pass laws and a Governor to enforce them would be vital. Likewise vital are courts which could be hamstrung if no Governor were available to appoint new judges. See Constitution Article VI, §§3, 4a, 8. Study should be made to find answers to these problems.

B. *Reestablishing Local Government.* Urban areas are accustomed to municipal services such as police and fire protection, and utilities such as water, sewers and electricity. Such services and utilities are furnished by units of local government, counties, cities and districts. It is vital that the legislative bodies of these local units be reestablished to deal with the problems that arise. It is possible that there might be no remaining members of the legislative body. Study should be made as to methods of speedy reappointment. It is suggested that local government reestablishment should not depend upon prior reestablishment of the state government, for,

as shown above, the state might not have a government. Perhaps a solution to the local problem would be alternate stand-by officers already appointed.

V. PRESERVATION OF RECORDS. The special committee was informed that studies were already being made as to preserving public records, so no work was done on this very important problem.

Members of the committee, however, did consult with their clients to see if said clients had duplicate records that would enable them to reestablish their businesses. With a few exceptions the universal answer was "no." Businesses with branches in other areas still had central records. While this is efficient business management, it is no protection after an atomic attack. Attorneys have important records in their offices. Studies should be made on preserving such private records.

VI. EMERGENCY RULES OF LAW (Legal First Aid). After an atomic attack problems certainly will arise that have not been anticipated. It is vital to have a state legislature that can deal with such problems by passing the necessary laws. The committee, then, did not consider any permanent law changes, but emergency rules only. Such emergency rules should be considered as "legal first aid."

A. *Court Problems.* Most litigation arising from atomic attack would probably occur in the areas worst hit. Shifts in population would result in more work for courts in outlying areas.

> "Should the business of a destroyed court be transferred to other courts or should the court simply be reconstituted and given other quarters? In either case, the safe deposit of microfilmed court records would be desirable. What provision should be made for the rapid replacement of dead and disabled judges and court personnel, due regard being given to the fact that the normal source of replacements would be in target areas? What changes in the rules as to jurisdiction and venue might be necessary in view of the likely shifts in courts and population? Certainly all rules as to constructive services should be reviewed." Cavers, supra, 55 Col. L.R. 152.

Disruption caused by atomic attack would justify tolling of the statutes of limitations. It would compel the altering of judicial time tables so that rights would not be lost through failure to file, etc. Should this be statewide, in the nature of a moratorium, or should it be an extension of existing rules on relief from judgments because of mistake, inadvertence or neglect?

The case load burden might require masters, referees and commissioners, pretrial procedures, and sharp limitations on appeals.

Remembering that the aim is to have legal "first aid" it is apparent that less damaged areas must do all of the work. Study should be made to see if legal machinery can meet the test and to suggest helpful legislation.

B. *Business Problems.* Long term contracts present a set of serious problems. The corporate mortgage with its various covenants might be unduly restrictive after an atomic attack had destroyed the trustee. Long term lessees might experience the same trouble that automobile dealers had with their showrooms in World War II. Supply and requirements contracts would almost certainly be disrupted. Distributorships and patent licenses would be affected. Executive employment contracts at high salaries could embarrass firms. Regulated contracts of utilities and carriers could result in legal roadblocks if the basis of determining rates changed. It is suggested that some of these problems can be met in advance by draftsmanship, but the usual *force majeure* clauses may not be desirable. "During World War II, courts in England and Germany were authorized to rewrite contracts when they became inequitable by reason of war conditions." Cavers, supra, 55 Col. L.R. 148. Study should be made of this form of "legal first aid." Perhaps the use of arbitration would not add to the court burdens.

Destroying the nerve centers of corporations can create serious problems. Some of the questions needing study are:

> "How should the chain of corporate command be extended and under what conditions should command be shifted? What emergency powers should be conferred on officers? What provisions should be adopted to govern special post-attack meetings of directors, reducing notice and quorum requirements? Should the SEC modify its rules as to proxy solicitation, to become effective upon attack? Would it be advantageous to create voting trusts of corporate shares, to become effective upon attack? What measures should be taken to facilitate the calling and holding of shareholders meetings and proof of share ownership and transfer?" Cavers, supra, 55 Col. L.R. 149.

Family and estate problems would face each of us and most of our clients. Some of the questions Professor Cavers feels need study are:

> "1. *Testamentary dispositions.* To what extent could the use of powers conferred on safely situated family friends or relatives make possible the post-attack revision of estate plans? Would a given plan provide sufficient liquidity to meet survivors' immediate needs, in the view of the closing of securities

markets and delays in payment of insurance proceeds? How should the risk of sharp post-war inflation be taken into account? Should the courts have power to revise dispositions where changed conditions due to attack had rendered wills and trusts unjust or ineffective to achieve the testator's or settlor's objectives?

"2. *Administration.* What should be done in advance to provide probate courts with personnel and physical facilities both to take the place of destroyed courts and to handle the greatly increased case load? What relaxation might be made as to jurisdictional requirements? What measures could be taken for protecting and insuring the accessibility of probate court records? Could *ante mortem* probate be used for wills? How should provision be made for substituting representatives and trustees where those designated in estate instruments (including *inter vivos* trusts) had been killed or incapacitated or, as in the case of corporate trustees, had become understaffed to handle the expanded case load? What simplifications are needed in the requirements as to guardians *ad litem?* What should be done to the notice requirements and timetables for probate courts and administration proceedings? Should administration through the courts be dispensed with entirely in estates below a specified size, say, 50,000 pre-attack dollars?

"3. *Proof.* Are present laws relating to proof of death and of survivorship in common disasters sufficient for atomic attack situations? What measures, if any, should be taken to facilitate proof of lost instruments? What measures could be adopted to facilitate the transfer of securities in cases involving problems of proof? To what extent should banks and safe deposit companies be entitled to recognize claimants to deposits and valuables without strict proof of right? Should special protection be given to personal representatives distributing on the basis of what by peacetime standards would be inadequate and inaccurate proof as to ownership? Should stricter post-attack rules of proof be set up to cover creditors' claims?

"4. *Insurance.* What moratoria might be provided for life insurance premiums and claims? What measures should be planned to assure the orderly rehabilitation of insurance company portfolios and the early recognition of claims, at least up to a limited amount? To what extent and under what conditions should new insurance policies be allowed to be written while atomic attacks were continuing? Would it be desirable to extend the facility of payment clause to other forms of insurance than industrial life? Could and should insurance policies be included in any powers granted for the post-attack revision of estate plans? What adjustments, if any, should be made in the division of state and federal regulatory powers over insurance?" Cavers, supra, 55 Col. L.R. 150-51.

VII. CONCLUSION. Even though the special committee has been very limited in its time, certain conclusions are apparent. These are as follows:

A. The problems presented are important and deserve thorough study.

B. The most important is the reestablishment of state and local government, including the courts, as all other problems hinge on having officers available to deal with the problems.

C. Some one agency needs to act as coordinator for the study of these problems. That agency could be the Assembly Subcommittee on the Impact of Enemy Attack on Constitutional Government, or any other qualified agency which would undertake the task of coordinating the studies to be made.

D. There is an ample supply of qualified people in California to study and report on these problems. Among the groups who would be qualified to study and report on various aspects of these problems from a legal standpoint, would be the following:

The State Bar of California

Local Bar Associations (particularly larger associations such as the Los Angeles Bar Association, the San Francisco Bar Association, the Alameda County Bar Association, etc.)

The Judicial Council

The Attorney General

The Legislative Counsel

The League of California Cities

The County Supervisors Association

The Irrigation Districts Association.

E. Specific problems should be assigned to the respective study groups. Because the various problems overlap, there will be some duplication of work, but if each study group knew what others were doing, they could check with each other as their studies progressed.

F. This special committee of the Los Angeles Bar Association would be willing to participate as a study group in a coordinated study of these problems in such specific field as might be assigned to it.

Respectively submitted

JAMES W. BEEBE, Esquire
MAX K. JAMISON, Esquire
WALTER F. KEEN, Esquire
FRANK L. MALLORY, Esquire
HARRY RABWIN, Esquire
RAYMOND G. STANBURY, Esquire
GEORGE R. RICHTER, JR., Esquire
Chairman

SPRING 1957 CONTINUING LEGAL EDUCATION PROGRAM

The Los Angeles Bar Association is again sponsoring The State Bar's continuing legal education program. The Spring 1957 lecture series is on "Creditors' Remedies and Bankruptcy." It will be given in the Auditorium, California Teachers Association Building, 1125 West Sixth Street, Los Angeles.

You will have your choice of attending either the weekend or week-night session. The lecture schedule is as follows:

Date	*Subject*	*Lecturer*
WEEK-NIGHT SESSION **Thursdays-Tuesdays**		
May 9 7:30 p.m.	1. Attachment and Garnishment; Claim and Delivery	Joseph H. Frenette
May 14 7:30 p.m.	2. Executions; Exemptions; and Supplementary Proceedings	Arthur W. Schmutz
May 16 7:30 p.m.	3. Insolvency Planning	Irwin R. Buchalter
May 21 7:30 p.m.	4. Initiating Bankruptcy Proceedings and the Bankrupt's Rights and Duties	Joseph J. Rifkind
May 23 7:30 p.m.	5. Functions and Powers of the Bankruptcy Trustee and Creditors' Claims and Distribution of Assets	Bernard Shapiro
WEEKEND SESSION **Friday-Saturday**		
May 24 1:00 p.m.	1. Attachment and Garnishment; Claim and Delivery	Robert K. Grean
May 24 3:30 p.m.	2. Executions; Exemptions; and Supplementary Proceedings	Charles Kaplan
May 24 7:30 p.m.	3. Insolvency Planning	Jack Stutman
May 25 9:00 a.m.	4. Initiating Bankruptcy Proceedings and the Bankrupt's Rights and Duties	David M. Richman
May 25 11:30 a.m.	5. Functions and Powers of the Bankruptcy Trustee and Creditors' Claims and Distribution of Assets	C. E. H. McDonnell

This series is offered through the facilities of University Extension. Attorneys in general practice are particularly urged to attend.

The registration fee for the series is $15.00 which should be sent to University Extension, 813 South Hill Street, Los Angeles 14. You will get the newest California Practice Handbook on "California Remedies for Unsecured Creditors" and the American Law Institute monograph on "Bankruptcy and Arrangement Pro-

ceedings." The handbook's 550 pages include many check lists, annotated forms and time-saving suggestions.

If you have any questions, please communicate with your local bar representative, who is Leslie C. Tupper, Lawler, Felix & Hall, 605 West Olympic Boulevard, Los Angeles 15. (TR. 5111.)

TAX REMINDER

PROFIT SHARING PLANS AND EMPLOYEES BENEFIT TRUSTS

By RALPH H. MOORE*

Attorneys having clients considering the adoption of a Profit Sharing Plan and Employees' Benefit Trust are reminded that it is not too soon to complete the preparation and qualification in order to obtain full advantage for the calendar year 1957.

To obtain the advantage of deductibility of employer contributions along with deferral of tax to the employees, and certain other advantages, it is necessary that the Plan and Trust be "qualified," i.e., comply with many technical requirements of the Internal Revenue Code and the Regulations issued by the Treasury Department.

This initial qualification of the plan and trust is usually assured by submitting the Plan and Trust in advance to the District Director of Internal Revenue and obtaining a favorable ruling, (sometimes without but frequently after requested amendment of the submitted plan and trust), prior to the Employer making the principal contribution after the close of the employer's tax year.

The increasing popularity and use of "qualified" Profit Sharing Plans and Employees' Benefit Trusts has created a temporary situation in which the applicant must allow for a delay of six to ten months in obtaining the ruling.

The Employer's contribution to the Employees' Benefit Trust by a calendar year taxpayer will be due on or before the following 15th of March, unless an extension of time to file a return is obtained, in order to obtain deductibility.

Most Employers are reluctant to make irrevocable contributions of substantial size to an Employees' Benefit Trust until they are

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*Member of the Los Angeles Bar Association and its Committee on Taxation.

assured of the deductibility of the contribution on their own tax return for the year involved. The alternatives of obtaining extensions of time for filing tax returns until a favorable ruling is obtained, or paying without an advance ruling, are equally unsatisfactory. The period of uncertainty affects the employer's business plans and is apt to be upsetting to the morale of employees who do not know whether there is a profit sharing plan or not.

Since applications for ruling are considered in the order in which they are filed with the District Director, it is advisable that any pending questions as to Plan or Trust provisions be decided at once subject to later review and amendment, and the Plan and Trust be adopted and submitted without delay.

1957 Junior Barrister Legal Essay Contest

This is the first announcement concerning the 1957 Junior Barrister Legal Essay Contest. Again this year the Junior Barristers will take over one of the issues of the Los Angeles Bar Bulletin to publish the winning essays. This is one of the most effective ways the younger members of the Bar can focus attention on their ability and get recognition from their elder brethren. Everyone interested in the contest should commence work at once.

In addition to the Justice Allen Ashburn Award of $100 for the first prize, two additional honorable mention awards, with suitable momentoes, will be made for the runner-ups.

Contest rules are as follows:

Eligibility: All attorneys, whether Junior Barristers or not, who had not reached 36 on or before December 31, 1956;

Subject: Any legal topic of interest or benefit to the legal profession;

Length: Approximately ten legal size, double spaced, typed pages;

Copies: Four legible copies should be submitted.

Deadline: Send copies to Junior Barrister Editorial Board, 815 Security Building, Los Angeles 13, California, no later than 5:00 P.M., September 4, 1957.

Brothers-In-Law

By George Harnagel, Jr.

George Harnagel, Jr.

During each session of the **Illinois** legislature the Illinois Bar Association publishes a Legislative Bulletin which reports on all bills introduced that affect the administration of justice or are deemed of general interest to the legal profession for other reasons. It provides a digest of these bills and follows their progress, if any, through the legislative mill. Copies of the Bulletin are sent to all members of the Association requesting them.

* * *

"Judicial reform is no sport for the short winded."—Albert T. Vanderbilt, Chief Justice of the New Jersey Supreme Court.

* * *

"The finest lawyer I ever knew was an old man who had been in and out of a thousand courtrooms, and won many a tough case. He used to say in all seriousness that if he had to go to court with only one book in his hand, he would choose Blackstone—*only* if he had misplaced his Bible."—From an address by John Ben Shepperd, Attorney General of **Texas**, at the 1956 ABA convention.

* * *

Alumnae

"It is still far more difficult for a woman attorney to find a position today, than it is for a young man, even though he may not have had as good an academic record. As one girl puts it, objections raised by law firms run from What will our clients think? to What will our wives think? There are several modifications and exceptions; usually, government jobs are as readily available to the woman lawyer as to the man if she is equally well qualified. Several court justices have actually expressed a preference for women as clerks, and normally a girl seeking a clerkship has been able to find one. (It should be noted that both government jobs and clerkships are expected to be of limited duration.) The barriers remain highest in the city firm, which is often bound by

tradition, precedent, and a wary eye to the reactions of clients with substantial retainers.

"In considering the city firm it is again necessary to make qualifications to any general statement. Geography plays an important part. Some New York firms have had women attorneys for over twenty years, and prefer to have several women on their staffs. . . ."—From an article by Nancy Young, in the *Harvard Law School Bulletin,* which surveys the activities of the thirty-four girls who graduated from the school in '53, '54 and '55 with its first three classes to accept female students.

* * *

Medico-Legal Department

"In my work with the medical profession I have come to the realization that practically all doctors have an aversion to appearing in court and testifying in a lawsuit. Although a few have had unpleasant experiences as witnesses, most have been frightened by the exaggerated reports by a colleague of 'murderous cross-examination' by an opposing counsel. For those of you who feel put upon by your role in litigation it may be some consolation to know that the Greek root or derivation of the word 'witness' is 'martyr.' "—From an address by C. Joseph Stetler, director, Law Department, before the **Colorado** State Medical Society.

"To the physician, the courtroom means wasting valuable time to give a carefully restricted opinion, necessarily based on inadequate observation, for persons who cannot understand the details of the problems and who probably will not believe him anyway."—Sidney Shindel, physician-lawyer, in the *Journal* of the American Medical Association.

Special Report of the Holbrook Courts Survey

This is a continuation of this Report, the first portion of which appeared in the March issue. It contains the recommendations of the special committee appointed to study James G. Holbrook's "A Survey of Metropolitan Trial Courts—Los Angeles Area." These recommendations have been approved by the Board of Trustees, except in the few instances where the contrary is indicated.

Recommendation M — Superior Court Use of Assigned Municipal Judges and Lawyers as Judges Pro Tem

The Survey recommends as an interim measure that the Superior Court should make greater use of assigned Superior Court and Municipal Court judges and with the consent of the parties it should also make use of lawyers as pro tem judges whose compensation should be shared by State and County.

The Committee approves.

Recommendation N — Jurisdiction of the Small Claims Court

The Survey recommends that jurisdiction of the small claims court should be increased.

The Committee approves.

Professor Holbrook's explanatory matter proposes that the increase be from $100 to $200. The Committee did not attempt to pass upon the amount of the increase.

Recommendation O — Juvenile Traffic Offenders

The Survey recommends that all municipal and justice court judges should be ex officio referees of the Juvenile Court with power to deal with juveniles solely in cases of traffic offenses in lieu of present police handling of such cases.

The Committee's recommendation is as follows: All municipal court judges and justice courts should have power to deal with juveniles solely in the cases of traffic offenses. At the present time, no court except the Juvenile (Superior) Court has jurisdiction over juvenile traffic offenders. Since the Juvenile Court does not have time to handle these cases, the Police Department in Los Angeles and in some other cities has set up its own extra-legal system of dealing with these offenders. The juvenile and his parents are ordered to appear before a police officer who may then order the juvenile to attend traffic school or may take up the juvenile's license. The only sanction behind this procedure is that a non-cooperating juvenile may be referred to the Juvenile Court.

This Committee does not favor the practice of having police officers impose discipline without legal authority, even though it is generally conceded that the Los Angeles Police Department is handling this work very well. The decision as to guilt or innocence and the kind of treatment to be given the offender is a judicial function and should be handled by a judge. This Committee does not believe that juvenile traffic offenders should be treated the same as adults in the Municipal Court. Special handling of juvenile traffic violators is desirable for the purpose of educating the juveniles and developing respect for law. The proposal made by a state-wide Juvenile Traffic study in 1952 is that the Juvenile Court should have authority to appoint any person, including both municipal judges and police officers, to act as referees to handle juvenile traffic cases. The Juvenile Court Committee of the Los Angeles Bar Association has endorsed that plan. The Committee feels that judging should be done by judges and not by policemen or referees. The proposal made in the Survey that municipal court judges should be appointed referees of the Municipal Court is opposed by the municipal court judges because they feel that they should not be made referees of any other court. It is the view of this Committee that the juvenile traffic offenders can and should be handled by the Municipal Courts and Justice Courts. Juvenile traffic offenders should be handled through a special division in a multiple judge court or by special calendar in a single judge court so that the juveniles will be processed in a manner suitable to them, and not added to the regular traffic calendar. In so recommending, the Committee does not propose that the present excellent work of the Police Department in conducting traffic schools and other educational treatment for juvenile offenders should be entirely abolished. It should be possible to work out a method whereby the police would cooperate in carrying out the functions of the juvenile traffic program, but leaving to the courts the strictly judicial responsibility of judging guilt and determining the extent of "punishment" or treatment. The Committee recognizes that this would be a substantial addition to the work of the Municipal Court because traffic citations are issued in this county to approximately 25,000 juveniles per year. Nevertheless, it is a judicial function which in the opinion of this Committee should be performed and should not be left to police officers merely because the only court which has jurisdiction (the Superior Court) is too busy to handle the cases.

Recommendation P — Setting Bail in Felony Cases

The Survey recommends that when a person is arrested without a warrant for a bailable felony, any judge or commissioner of the Superior Court should be empowered but not obliged to fix bail and order the release of the accused.

The Committee approves. This has been the subject of a careful study by the State Bar Committee on Criminal Law and Procedure. The State Bar is sponsoring legislation to put this proposal into effect.

Recommendation AA — Medical Expert Panel

The Survey recommends that for a period of at least one year the Superior Court should experiment with the use of impartial expert medical testimony in personal injury cases.

The Committee approves.

Recommendation BB — Statutory Witness Fees

The Survey recommends that the statutory witness fee in civil cases should be increased to $6.00 per day and mileage.

The Committee recommends by a vote of 11 to 2 that the witness fee be $4.00 plus mileage, while the minority of 2 favor the $6.00 fee. The majority believe that the witness fee should not exceed the amount of the jury fee which this Committee has recommended to be $4.00. Furthermore, a witness (unlike a juror) is ordinarily compensated by the party calling him for any actual loss of earnings during the time he is required to be in the courtroom. Thus, in practical effect, the statutory witness fee applies mainly to those witnesses who have actually suffered no loss of income.

The Board adopted the minority report of the Committee.

Recommendation CC —

The Survey recommends that the results of plebiscites conducted by the Los Angeles Bar Association should be disseminated on a wider scale.

The Committee approves.

Recommendation DD — Abolition of Jury Trial in Psychopathic Cases

The Survey recommends that jury trials should not be permitted in psychopathic cases.

The Committee disapproves by a vote of 12 to 1. Although it may be true as asserted in the Survey that lay jurors are not qualified to pass upon the mental condition of a person, and that juries have a tendency to release people who should be committed to an institution, nevertheless, this Committee feels that the right of trial by jury is a valuable safeguard in psychopathic cases. The

Committee is more concerned about the danger that psychiatrists, through inadvertence or in an excess of enthuiasm for their own medicine, may recommend confinement for a person who is not psychopathic. Various people have noted a tendency on the part of psychiatrists to change their opinions and recommend against confinement after the alleged psychopath has indicated his intention to demand a jury trial.

Recommendation EE — Jury Instructions: Taken to Jury Room

The Survey recommends that in civil cases the jury should be permitted to take jury instructions to the jury room.

The Committee disapproves. Many years ago jurors in California were permitted to take the written instructions into the jury room but the practice was abolished because it resulted in a greater number of hung juries. Some jurors had a tendency to seize upon one particular instruction and argue the case on the basis of that one instruction rather than to consider the instructions as a whole. Furthermore, where jury instructions submitted by the respective parties have portions deleted and new matter interlined, there is the danger that a juror may draw some improper inference from the changes in language which will appear on the written instructions.

Recommendation FF — Jury Instructions: Lay Participation in Drafting

The Survey recommends that in the periodic revisions of standard form instructions for juries, laymen should be consulted concerning their understanding of the language used.

The Committee approves by a vote of 12 to 1 this recommendation if the words "it is suggested" be inserted therein before the word "layman." It is the feeling of several members of the Committee that the revision of the form instructions should be left to the consideration of the judges and attorneys who serve on the committee appointed for that purpose and that such drafting committee should consult laymen or not, as it sees fit.

Recommendation GG — Protracted Illness of Judges: Program of Reduction in Salary

The Survey recommends a reduction in salary on a graduated scale in the event of a protracted illness of a judge.

The Committee approves, although this Committee does not express any opinion as to whether the time limits and the scale of reduction suggested in the Survey are proper.

Recommendation HH — Uniformity in Reporting Judicial Time

The Survey recommends:

(1) For comparative purposes there should be uniformity in reporting judicial time.

(2) The Municipal Court should add hours in chambers and overtime to the reports.

(3) These reports should be made by the judges themselves rather than by their clerks.

The Committee approves parts (1) and (2) of this recommendation and disapproves part (3) by a vote of 11 to 2. The majority could see no added value in requiring the judges to make out their own reports.

Recommendation II —

The Survey recommends that reports of judges as to hours and work load should be made on an individual judge basis rather than by division in Municipal Courts.

The Committee approves.

Recommendation JJ —

The Survey recommends that in reporting cases under submission judges should indicate how many cases, if any, were resubmitted.

The Committee approves.

Recommendation KK —

The Survey recommends with respect to the commissioners of the Superior Court:

(1) All general commissioners of the Superior Court should be required to be admitted to the Bar and have five years' practice of law at the time of their appointment;

(2) The qualifications and salary of the Conciliation Commissioner in the Superior Court should conform to the qualifications and salary of a general commissioner.

The Committee approves part (1) of this recommendation but would eliminate therefrom the word "general." It should apply to "all commissioners of the Superior Court."

With respect to subdivision (2) the Committee is advised that the judges of the Superior Court favor abolition of the office of Conciliation Commissioner. The duties formerly performed by the Conciliation Commissioner are not the duties of a judicial officer. The judges are asking that the Legislature authorize the employment of a Conciliation *Supervisor* whose qualifications and duties will be quite different from those of a Court Commissioner.

At the present time the judge in the Conciliation Department does not need anyone to perform the duties set out in C. C. P. Sec. 259(a) for commissioners, but if such services should be required a regular commissioner could be brought in for that purpose. In view of the position taken by the judges, this Committee recommends that the Association take no action with respect to recommendation KK(2).

Recommendation LL — Selection of Reporters

The Survey recommends that all persons who qualify for the position of Official Reporter by passing the qualifying examination should be placed on one list in the order of their achievement in the examination and each vacancy for the position of Official Reporter should be filled from the top three on this list. All reporters on the list for whom no vacancy exists should constitute the pro tem list.

The Committee disapproves. The action of this Committee is based primarily upon a report of the Superior Court Committee on Reporters for the year 1956, of which the Honorable Clyde C. Triplett was Chairman. The Superior Court committee points out that the Survey's recommendation is apparently based upon a misunderstanding of the present system. At the present time there are two lists of pro tem reporters designated List No. 1 and List No. 2. Both are made up of reporters who have passed a qualifying examination. List No. 1 is limited to 20 reporters who have agreed to be available for services in court whenever required. List No. 2 is made up of all other reporters who have qualified. When pro tem reporters are required, assignments are made in rotation from List No. 1. If no one on List No. 1 is available, a reporter on List No. 2 is called. However, the reporters on List No. 2 make their

living primarily in the deposition business or other private employment and are not required to keep themselves available for court work as are the reporters on List No. 1. It is necessary that List No. 1 be kept small so that there will be a sufficient amount of work for each member to enable him to make a living. At the present time, the reporters in private employment are making so much money that it is difficult to find good reporters who are willing to serve on List No. 1.

When there is a vacancy for a permanent Official Reporter in a particular Superior Court department, the judge of the department has the privilege of selecting an official reporter from either List No. 1 or List No. 2. It is important to note the fact, which the Survey apparently missed, that there is no basis for assuming that reporters on List No. 1 are any better qualified than reporters on List No. 2.

Under the present system examinations are given only to applicants who desire to be added to the list. After a reporter qualifies, no re-examination is required. If, as the Survey proposes, vacancies in the position of Official Reporter should be filled on the basis of achievement in the qualifying examination, then it would be necessary for all candidates to take the same qualifying examination. This would mean a considerable additional burden and expense in conducting periodic examinations (which are conducted by a committee of the Bar who donate their time). Several reporters have said they would resign rather than take repeated competitive examinations. The Survey's recommendation that there be only one list of pro tem reporters is impracticable in view of the necessity of having a small group of steadily employed pro tems and a supplemental group of pro tems for emergencies.

This Committee is informed that the 1957 Superior Court Committee on Reporters will give further study to the problem. Such study should precede recommendation from the Los Angeles Bar Association on the subject.

Recommendation MM — Master Calendar: Procedure Concerning Motions and Continuances

The Survey recommends:

(1) All motions and continuances should be supported by affidavits.

(2) The 30-day rule should be abolished and if there is no good

ground for continuance and neither side is ready, the case should be taken off calendar.

(3) Calendar adjustments should be made at least two weeks before trial if either counsel expects to be engaged in another court.

(4) When a law office requests calendar adjustments too often, notice should be given that such adjustments will be denied.

(5) If the moving party has no good ground for continuance, in the court's discretion the case should be either ordered to trial forthwith or placed off calendar.

The Committee disapproves all parts of this recommendation. These are all matters which require the exercise of judicial discretion. Each application for continuance must be heard and decided on its own merits. The Survey proposes rules which would prohibit the exercise of judicial discretion. There are some situations obviously requiring a continuance even though there is no affidavit on file. There are many occasions when a lawyer cannot know whether or not he will be engaged in a trial two weeks hence.

Recommendation NN — Civil Master Calendar Call of Municipal Courts

The Survey recommends that the Civil Master Calendar call in

Los Angeles Municipal Court should be commenced at 9:00 A.M., rather than 9:30 A.M.

The Committee recommends that the Civil Master Calendar call in both the Municipal Court and the Superior Court should be commenced at 9:15 A.M. The Committee is informed that the Municipal Court calendar has been set for 9:30 in order to accommodate attorneys who have matters on the calendar in other courts commencing at 9:00 o'clock and 9:15. It is reported that so far as the judges of the Municipal Court would have no objection to calling the master calendar at an earlier hour if that was more convenient to the Bar. The Committee believes that a calendar call earlier than 9:30 would make it possible for trials to start earlier in the Municipal Courts, particularly since Municipal judges do not have default divorces in the early morning. The possibility that some attorneys may have conflicting engagements does not impress the Committee as a reason for a later calendar call. If an attorney has two or more engagements between 9:00 and 9:30 A.M., he will probably have to ask special consideration one place or another, whether the master calendar is called at 9:30 or earlier. The Committee doubts that any judicial time is saved by calling the master calendar at 9:00 o'clock. The experience of attorneys in the Superior Court has been that if they are assigned out to a trial department at 9:05 they wait in the trial department until approximately 9:45 before commencing the trial. On the other hand, if an attorney does not have to be in court until 9:15 he has a better opportunity to stop at his office or at least telephone in and give instructions before appearing in court.

Recommendation OO — Master Calendar Call in Superior Branch Courts and Outlying Municipal Courts

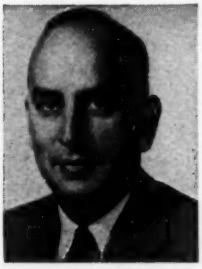
The Survey recommends that in courts having three judges or less, a master calendar should be prepared but no calendar call be held; and the court clerk should advise attorneys as to the courtroom to which they are assigned.

The Committee recommends that the Los Angeles Bar Association take no action with respect to this recommendation. It is a matter which should be worked out by the presiding judge of each court, taking into consideration the problems of the particular court. As a general practice, it is necessary to have a calendar call by the judge so that in the event of a continuance the court can order witnesses to return.

(To be continued)

Silver Memories

Compiled from the World Almanac and the L.A. Daily Journal of April, 1932, by A. Stevens Halsted, Jr.



A. Stevens Halsted, Jr.

A new name appears on the Bar Association's standing committee on Judicial Candidates and Campaigns, following the resignation of **W. Turney Fox,** recently appointed to the Superior Bench by **Governor Rolph.** He is succeeded by **Ewell D. Moore.** This important committee is headed by **Wm. J. Hunsaker,** the other members are **Louis W. Meyers, Leonard B. Slosson, Joseph P. Loeb, Alfred L. Bartlett, Jefferson P. Chandler, Byron C. Hanna, E. D. Lyman, J. Perry Wood, Frank G. Finlayson, Edna C. Plummer, J. W. Morin, Ralph H. Clock** and **Walter F. Dunn.**

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At the April meeting of the Bar Association, **Oscar Lawler** gave an address on the "Responsibility of the Judiciary." County Counsel **Everett W. Mattoon** presented a tribute to **Oliver Wendell Holmes,** "the most youthful mind to leave the Supreme Court." **Arthur L. Syvertson** spoke on Justice **Benjamin Nathan Cardozo,** successor to Justice Holmes.

* * *

Governor **James Rolph, Jr.** has named **Thurmond Clarke,** a deputy city attorney, to the Municipal Court to fill the unexpired term of **E. J. Lickley,** recently deceased. Mr. Clarke served for two years in the district attorney's office as a deputy before joining the city's legal department.

* * *

The local bar has been rocked by the shocking disclosures of a special committee of the Association appointed to investigate matters concerning certain Judges of the Superior Court

and Receiverships. The Committee's findings show that certain indiscretions committed by four judges cast a shadow of suspicion on the integrity of the courts. This fearless committee, under the chairmanship of **Hubert T. Morrow,** is composed of **John G. Mott, Dana R. Weller, Ward Chapman, Isidore B. Dockweiler, Edwin A. Meserve, Kemper Campbell, Arthur M. Ellis** and **Richard J. Dillon.** As a result of the disclosures of the report, a number of the accused Judges were later recalled at the November general election.

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Governor **Rolph** has refused to grant the pardon sought by **Thomas J. Mooney,** the former labor leader, whose conviction of murder after the Preparedness Day bombing sixteen years ago in San Francisco has been a cause of unceasing agitation.

* * *

Phar Lap, the big red gelding six-year old race horse recently brought from Australia, and which won the Agua Caliente Handicap in March, died in Menlo Park, California. His turf winnings totalled $332,250. He was bought as a colt for $800.

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In a special poll of The Literary Digest on prohibition, the lawyers of the United States are voting more than 3 to 1 wet and no state in the returns of the legal profession poll shows an outright dry majority. Kansas tops the dry column, with a percentage of 43.62% in favor of continuance of prohibition, while on the other hand the lawyers of Nevada give a majority of 20 to 1 in favor of repeal.